

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES FRANTZ,)	CIVIL ACTION NO. 23-284
)	
Plaintiff,)	
)	
)	
v.)	
)	
WESTMORELAND COUNTY)	
PRISON, BRIAN L. KLINE,)	
WEXFORD HEALTH SOURCES, INC.,)	
JOHN DOE DEFENDANTS 1-10, and)	
JOHN DOE DEFENDANTS 11-20,)	
)	
Defendants.)	

MEMORANDUM OPINION

This case was referred to a United States magistrate judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D. On May 1, 2024, the magistrate judge issued a Report and Recommendation (“R&R”) (ECF No. 38), which recommended that the motion to dismiss (ECF No. 29) filed by defendant Wexford Health Sources, Inc. (“Wexford”) be granted.

Plaintiff, former inmate James Frantz (“Frantz”), is represented by counsel in this case. Frantz’s counsel filed a response in opposition to the motion to dismiss (ECF No. 37). The R&R provided that any objections be filed within 14 days and that failure to timely file objections will waive the right to appeal. No party filed objections by that date. On June 13, 2024, Frantz’s counsel filed a notice stating that Frantz has no objection to the R&R (ECF No. 39). The R&R is ripe for review.

Standard of Review

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the district court “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made” and “may also receive further evidence or recommit the matter to the magistrate judge with instructions.” 28 U.S.C. § 636(b)(1)(C). Rule 72(b)(3) requires de novo review of any recommendation that is dispositive of a claim or defense of a party to which proper objections were made. *See Fraunhofer-Gesellschaft Zur Forderung Der Angewandten Forschung E.V. v. Sirius XM Radio Inc.*, No. 1:17CV184, 2021 WL 1147010, at *1 (D. Del. Mar. 25, 2021).

Even if no objections are filed, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; *see also McClain v. Pennsylvania Department of Corrections*, No. 1:19-CV-1951, 2020 WL 1690081, at *1 (M.D. Pa. Apr. 7, 2020); *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010) (explaining that judges should review dispositive legal issues raised by the R&R for clear error).

Discussion

Following an independent review of the record, the court is satisfied that the R&R contains no clear error and will therefore accept the recommendation of the magistrate judge that Wexford’s motion to dismiss (ECF No. 29) be granted. The court observes that the dismissal of count III will be with prejudice; and the dismissal of the remaining counts will be without prejudice. The court also is aware that the Westmoreland County Prison defendants filed an

answer to the complaint.

Conclusion

For the reasons set forth above, the motion to dismiss (ECF No. 29) filed by defendant Wexford Health Sources, Inc. (“Wexford”) will be granted. The court will adopt the R&R (ECF No. 38) as the opinion of the court, as supplemented herein.

An appropriate order follows.

Dated: July 9, 2024

BY THE COURT

/s/ Joy Flowers Conti
JOY FLOWERS CONTI
SENIOR UNITED STATES DISTRICT JUDGE